

SUPREME COURT OF SOUTH DAKOTA

Toft v. Toft

2006 SD 91 · No. 23945 · Decided October 18, 2006

SUMMARY

The Supreme Court of South Dakota affirmed an award of attorney's fees to the biological father in a dispute involving grandparents' custody and visitation rights. The court held that the fee application was timely, that SDCL 15-17-38 authorized the award because the proceedings occurred in the context of a divorce action, and that the circuit court properly relied on its memorandum opinion rather than separate findings and conclusions. The court also awarded the father \$2,356.22 in appellate attorney's fees and denied the grandparents' request.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	October 18, 2006
DOCKET	23945
DISPOSITION	affirmed
PROCEDURAL POSTURE	Maternal grandparents appealed a circuit court order awarding the biological father \$11,963.05 in attorney's fees arising from custody and visitation litigation in an ongoing divorce proceeding.
STANDARD OF REVIEW	Attorney's-fee awards are generally reviewed for abuse of discretion. Whether a statute authorizes an award of attorney's fees is a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of South Dakota; precedential.
PARTIES	Elmer Stratmeyer, Cornelia Stratmeyer v. Patrick Dale Toft

TOPICS

- family law procedure
- divorce
- guardianships
- attorney fees
- appellate procedure

PRACTICE AREAS

family law

guardianships

appellate procedure

attorney fees

statutory interpretation

QUESTIONS PRESENTED

1. Whether the attorney's-fee award had to be reversed because the circuit court did not separately file findings of fact and conclusions of law.
2. Whether the father's July 31, 2003 motion for disbursements and attorney's fees was timely under SDCL 15-6-54(d).
3. Whether SDCL 15-17-38 authorized attorney's fees for the father's custody and visitation litigation involving the grandparents.
4. Whether the circuit court abused its discretion by ordering the grandparents, rather than the mother as well, to reimburse the father's attorney's fees.
5. Whether either party was entitled to appellate attorney's fees.

HOLDINGS

1. A circuit court's failure to enter separate formal findings and conclusions does not require remand when the court incorporates a memorandum decision into its order, the appellate issues do not turn on factual findings, and the record sufficiently discloses the basis for the decision.
2. The father's July 31, 2003 motion was timely because SDCL 15-6-54(d) establishes a deadline measured from entry of the judgment awarding fees, not a requirement that the motion be filed within thirty days before judgment.
3. SDCL 15-17-38 authorized an award of attorney's fees because the father's motions were decided in a divorce proceeding in which the grandparents had been joined as parties and which governed the ultimate custody and visitation disputes.
4. The circuit court did not abuse its discretion by ordering the grandparents alone to reimburse part of the father's attorney's fees rather than requiring reimbursement from the mother as well.
5. The father was entitled to \$2,356.22 in appellate attorney's fees, while the grandparents were not entitled to appellate fees because they did not prevail.

KEY QUOTATIONS

“The appellate court may decide the appeal without further findings if ‘(1) the record itself sufficiently informs the court of the basis for the trial court’s decision on the material issue, or (2) the contentions raised on appeal do not turn on findings of fact.’” (¶ 12)

“South Dakota utilizes the American rule that each party bears the burden of the party’s own attorney[’s] fees.” (¶ 17)

“It is well settled in this state that a divorce court has continuing jurisdiction over its decrees,” (¶ 21)

FACTUAL BACKGROUND

The biological parents were married and had twins who lived with the maternal grandparents from birth because of problems affecting the parents. The grandparents were joined as interested parties in the parents' divorce, received custody subject to the father's visitation, and became involved in repeated disputes over visitation and custody. The circuit court ultimately terminated the grandparents' custodial rights, awarded custody to the parents, and found that the grandparents had interfered with the father's visitation and relationship with the children. The court awarded the father \$11,963.05 in attorney's fees, less than half the amount requested.

PROCEDURAL HISTORY

The grandparents were joined as interested parties in the parents' divorce action and were initially awarded custody of the children subject to the father's visitation rights. After continuing disputes, the circuit court terminated the grandparents' guardianship, awarded joint custody to the parents, and later awarded the father partial reimbursement of attorney's fees. The grandparents appealed, challenging the absence of formal findings and conclusions, the timeliness of one fee motion, statutory authorization for fees, and the apportionment of fees; both sides also sought appellate attorney's fees.

DISPOSITION

affirmed

CASES CITED

- In re Guardianship and Conservatorship of A.L.T. & S.J.T., 2006 SD 28, 712 N.W.2d 338
- Credit Collection Services, Inc. v. Pesicka, 2006 SD 81, ¶ 5, 721 N.W.2d 474, 476
- In re South Dakota Microsoft Antitrust Litigation, 2005 SD 113, ¶¶ 27, 29, 707 N.W.2d 85, 97-98
- Wald, Inc. v. Stanley, 2005 SD 112, ¶ 10, 706 N.W.2d 626, 629
- Hoffman v. Olsen, 2003 SD 26, ¶ 10, 658 N.W.2d 790, 793
- Grode v. Grode, 1996 SD 15, ¶ 29, 543 N.W.2d 795, 803
- Ridley v. Lawrence County Commission, 2000 SD 143, ¶ 13, 619 N.W.2d 254, 259
- Swanson & Youngdale, Inc. v. Seagrave Corp., 561 F.2d 171, 173 (8th Cir. 1977)
- Heikkila v. Carver, 416 N.W.2d 591, 592 (S.D. 1987)
- Speck v. Anderson, 349 N.W.2d 49, 51 (S.D. 1984)
- Crisman v. Determan Chiropractic, Inc., 2004 SD 103, ¶ 26, 687 N.W.2d 507, 513
- Public Entity Pool for Liability v. Score, 2003 SD 17, ¶ 7, 658 N.W.2d 64, 67-68
- In re Guardianship of T.L.R., 2002 SD 54, 645 N.W.2d 246
- Osgood v. Osgood, 2004 SD 22, 676 N.W.2d 145
- Weekley v. Weekley, 1999 SD 162, ¶ 25, 604 N.W.2d 19, 25
- Hershey v. Hershey, 467 N.W.2d 484, 486 (S.D. 1991)
- Eggers v. Eggers, 82 S.D. 675, 679, 153 N.W.2d 187, 189 (1967)
- Berens v. Berens, 2004 SD 121, ¶ 12, 689 N.W.2d 207, 212
- Price v. Price, 2000 SD 64, ¶ 52, 611 N.W.2d 425, 436

- Schaefer ex rel. S.S. v. Liechti, 2006 SD 19, ¶ 20, 711 N.W.2d 257, 264
- In re Writ of Certiorari as to Wrongful Payments of Attorney Fees Made by Brookings School District School Board, 2003 SD 101, ¶ 25, 668 N.W.2d 538, 547

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